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NOMINATION OF MARY L. SCHAPIRO

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

THE NOMINATION OF MARY L. SCHAPIRO, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR THE TERM OF 5 YEARS EXPIRING JUNE 5, 1994 [REAPPOINTMENT]

NOVEMBER 16, 1989

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NOMINATION OF MARY L. SCHAPIRO, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR THE TERM OF 5 YEARS EXPIRING JUNE 5, 1994 [REAPPOINTMENT]

THURSDAY, NOVEMBER 16, 1989

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 4:18 p.m., in room SD-538 of the Dirksen Senate Office Building, Senator Donald Riegle (chairman of the committee) presiding.

Present: Senators Riegle, Garn, Heinz, Gramm, Shelby, and Sanford.

OPENING REMARKS OF CHAIRMAN RIEGLE

The CHAIRMAN. The committee will be in order.

We have before us the nominee, Ms. Schapiro. We are pleased to have you. You had a number of people who are strong supporters of yours, one seated beside you, and Senator Gramm of Texas, and others. We made this adjustment today so that we could have you here today, and that we would have an opportunity to assess your nomination and be able to act upon it before the Congress adjourns.

I have an opening statement from Senator D'Amato, and I want to include that as part of the record.

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. Good afternoon, members of the committee. I am very pleased to have the opportunity to introduce to you this afternoon Mary Schapiro, who has served since December 1988 as a Commissioner of the U.S. Securities and Exchange Commission. Ms. Schapiro is distinguished not only as a SEC Commissioner, but also as a native of the State of New York.

I think the committee is very fortunate to have before it for consideration the nomination of Commissioner Schapiro to a 5-year term on the Commission. In the last months, Ms. Schapiro has demonstrated her capacity to serve the Commission in the finest traditions of the SEC. She has worked diligently and steadfastly to deal with all the complex matters that have come before the Commission in the past year. In doing so, she has shown herself to be a person possessed of great integrity and thoughtfulness, and I am

confident that she will continue in the same manner during her new term.

Commissioner Schapiro has had a long history of public service that predates her appointment to the SEC. Commissioner Schapiro worked for many years at the Commodity Futures Trading Commission—first, as a trial attorney in the manipulation and trade practice investigations unit of the Division of Enforcement, and then as counsel and executive assistant to Susan Phillips, the Chairman of the CFTC. In 1984 Commissioner Schapiro became the general counsel and senior vice president of the Futures Industry Association, an organization representing some 300 financial institutions.

Mr. Chairman, I hope that your review of Commissioner Schapiro will give you the same confidence that I have that she will serve the national interest at the Securities and Exchange Commission.

The CHAIRMAN. Now I want to call on our colleague, Senator Sanford.

OPENING REMARKS OF SENATOR SANFORD

Senator SANFORD. Mr. Chairman, I want to especially thank you for your attention to this nomination and your accommodating this hearing so we could indeed keep her from taking a 2-month vacation. I think maybe she approaches this with mixed feelings.

Ms. Schapiro was born and raised in the great State of New York, but her mother's family is one of the oldest families in North Carolina. Her ancestors, as a matter of fact, came to the Colonies in the 17th century. Among many notable achievements of her family, her grandfather was a professor at the University of North Carolina.

And Mr. Chairman, up in the higher branches of the Schapiro tree, you will find that she is somewhat related to the Sanford family.

The CHAIRMAN. I see.

Senator GRAMM. She does not look like him, Mr. Chairman. [Laughter.]

Senator SANFORD. I will elaborate on that only if I have to. [Laughter.] Mary Schapiro has a history of service in the securities area, which makes her so well qualified for the position for which she has been nominated and the position in which she has already served.

She is an honors graduate from the National Law Center at George Washington University, and upon graduation, was counsel to the Commissioner of the Commodity Futures Trading Commission. Before her appointment to the SEC, she served as senior vice president and general counsel for the Futures Industry Association. She came in as a recess appointment last December, and the administration is now seeking formal approval from the Senate for her to continue in this position.

For the past 11 months, she has performed remarkably well in the capacity as Commissioner of the Securities and Exchange Commission, and has impressed the staff, the SEC, and the industry as

well, as being hard-working and capable. Her experience with the CFTC and the FIA have proven advantageous.

I commend Ms. Schapiro to you and this committee. I am sure she will serve with the same high distinction that she has in the past 11 months, and I am proud to present her to the committee, and urge prompt approval.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, I might say, she could not have a stronger endorsement than from you in the words that you have just spoken. That has an impact on this Senator and I am sure others as well.

Do any other Senators want to make any opening comment before we call on our nominee?

OPENING REMARKS OF SENATOR GARN

Senator GARN. Just a very brief one, Mr. Chairman.

It is unusual when we have the opportunity to judge a nominee's performance. Often, most of the time, we have them come here and we look at resumes. In this case, we have the opportunity to judge someone who has served in the position for a year, and she has certainly done well in my opinion. I wholeheartedly support her.

Senator HEINZ. I would like to add one comment to that, if I might.

The CHAIRMAN. Please, Senator Heinz.

OPENING REMARKS OF SENATOR HEINZ

Senator HEINZ. I wholeheartedly agree that it is quite an advantage to us all to have somebody with 11 months on-the-job training. But even more than that, the background that Ms. Schapiro has at the CFTC could not be more appropriate.

We have learned that it is very important that we have a very good understanding of the interrelationship between the two markets. And as the recent decision of the Seventh Circuit Court involving index participations reminded us, the issues of jurisdiction and definition between securities and futures remain to be resolved to the satisfaction of all parties.

I sincerely hope that Ms. Schapiro's experience in the futures industry will help us bridge a gap that at times has been a chasm between New York and Chicago. So I welcome her.

The CHAIRMAN. Very good.

Senator SHELBY. Mr. Chairman, could I be real brief?

The CHAIRMAN. Yes, Senator Shelby.

Senator SHELBY. I just want to add my remarks to the fact that has already been said, that very seldom do we have someone with experience on the job coming in here like you have. I think that, and your background, your recommendation by my colleague from North Carolina—I just wish we could vote on you right now, and we would get you out.

Thank you. [Laughter.]

The CHAIRMAN. Thank you very much, Senator Shelby.

Let me ask you to stand and raise your right hand.

Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. SCHAPIRO. I do.

The CHAIRMAN. Do you agree to appear and testify before any duly constituted committee of the Senate?

Ms. SCHAPIRO. I do.

The CHAIRMAN. Very good.

Let us now ask you if you have some opening comments you would like to make to us.

TESTIMONY OF MARY L. SCHAPIRO, OF THE DISTRICT OF COLUMBIA, NOMINEE TO BE A MEMBER OF THE U.S. SECURITIES AND EXCHANGE COMMISSION

Ms. SCHAPIRO. Thank you, Mr. Chairman.

I have some very brief comments.

I thank you very much for scheduling this hearing today. I know that there are many other vital matters on the committee agenda at this time, and I appreciate the special efforts of you, Mr. Chairman, and the other members of the committee to schedule this so promptly, and of course the efforts of your staffs in helping to prepare for this hearing.

I would also obviously like to thank the President for my nomination.

I have been a member of the Securities and Exchange Commission for almost one year, since December of 1988. It has been the highest privilege of my career to serve as a Commissioner of the Securities and Exchange Commission. The past year has been marked by many important challenges for our Nation's financial markets and for the SEC, as it has sought to protect investors and to foster free, fair, efficient, and competitive markets.

My colleagues on the Commission are dedicated, energetic, and creative, and they are committed to fulfilling the agency's statutory mandates.

Chairman Breeden has brought the Commission fresh leadership and new ideas. If confirmed, I look forward to working with him and with this committee in the coming years.

I came to the SEC with a very high regard for its career staff. My respect for the staff has only grown over the past year. They are dedicated public servants, experts in their fields, and extremely hard working. Equally important, they have the highest integrity.

To be successful, a regulatory agency must have not only a highly dedicated and expert staff, but also a Commission that has the will to apply that expertise independently, fairly, and with vigor, to achieve the agency's congressionally mandated mission.

If confirmed, I would welcome the opportunity to continue to serve the agency as it pursues that goal, and to work with the Congress as we face together the challenges of evolving financial markets.

Thank you very much. I would be pleased to answer questions.

The CHAIRMAN. Very good.

We appreciate your statement. It is noted that you had nearly a year of training that precedes your appearance here today.

I would like to begin by asking you to list for us if you would the key operational priorities that you have in mind, assuming you are confirmed here, your orientation, not somebody else's. Where do

you see yourself putting the most emphasis, to things of greatest concern to you, looking ahead?

Ms. SCHAPIRO. Well, I think to the extent a Commissioner can be helpful in the endeavor of securing greater resources for the agency, that that is my No. 1 priority, and perhaps is for all of the other Commissioners.

We have, as I say, a terrific staff, hard-working, dedicated. We cannot pay them enough to keep them as long as we would like. I think that we will over the years, as we try to compete with other Federal agencies, even have trouble hiring people of the caliber that we have now.

But beyond the ability to get more resources for the agency, I think that one of the areas that I would like very much to focus on is internationalization, and to the extent possible, helping to keep our markets competitive world-wide. I think that that has got to be one of our highest priorities.

There are a number of ways to deal with that issue such as through memoranda of understanding in the enforcement context, multijurisdictional disclosure to facilitate offerings across national boundaries, working with groups such as IOSCO to smooth out the differences in regulation and accounting standards and in other areas that are very different from country to country at this time.

I think the Commission in my opinion has to continue to have a very strong focus on its enforcement program. The penny stock fraud area is obviously critical, but we need to continue to look at insider trading, financial and accounting fraud, and the whole gamut of other areas that we run into in the enforcement arena.

The CHAIRMAN. Did you consider yourself as bringing a strong enforcement philosophy and attitude?

Ms. SCHAPIRO. I do, Mr. Chairman. I started my career as an enforcement attorney at the Commodity Futures Trading Commission. And it was one of the most gratifying things I have ever done. I enjoyed it very much.

It also imbued in me a sense that the laws are there to be enforced, and that it is the reponsibility of the Government to do that with as much vigor as possible. So I have a very strong feeling about the agency's enforcement program and its continued effectiveness.

The CHAIRMAN. Now, you talk about the need for higher salaries—I certainly understand that, and I support that position, especially so as not to have the SEC out of sync with other agencies of the Government as they are trying to attract top talent of like kind. Are you also saying that even with higher salaries, that more personnel are needed?

Are we short-handed at the Commission?

Ms. SCHAPIRO. My sense is that we are short-handed. We need to be able to compete and, as you said, keep the good people and pay them competitively with other, particularly banking, agencies.

But I think we need more people, too. As an example, in the investment management division, because we do not have enough people to inspect investment advisors, we conduct investment advisor examinations on about a once every 12-year cycle. I do not think that that is really acceptable.

Our response to that has been to propose an investment advisors self-regulatory organization. But that is really just one example, I think, of the areas in which the Commission could utilize more bodies to do more work.

The CHAIRMAN. Let me ask you, the SEC is now in a position to challenge a tender offer on the basis that the offer violates the margin requirements as established by the Federal Reserve.

I am wondering if you would support enforcement actions against a bidder on that basis?

Ms. SCHAPIRO. Yes, I would. The way we have traditionally dealt with those cases is to discuss them with the Federal Reserve Board, and to take their advice as to whether there has in fact been a margin violation. And then the SEC proceeds to enforce the law if there has in fact been a violation.

I very strongly support enforcement of margin regulations.

The CHAIRMAN. Let me ask you this. As investment banking firms become more actively engaged in providing high-risk capital, such as big bridge loans for takeovers and LBO's, how do you think the system for evaluating their own capital adequacy should change? Is there sufficient surveillance now in this area, as you see it?

Ms. SCHAPIRO. I do not believe so. Lots of what happens in the bridge loan financing area is not done in the broker-dealer, where it is subject to net capital requirements of the SEC. Often it is done in a holding company.

It is largely for that reason that the SEC has requested in its market reform legislation the power to do risk assessment for holding companies.

The CHAIRMAN. Let me ask you one other question, and then I am going to yield to my colleagues.

That is, the Commission has considerable authority over the accounting industry. Do you believe the SEC should take a more active role in the process of setting generally accepted accounting principles?

And do you believe that the accountants share part of the responsibility for the huge pile-up of problems that we have seen in the thrift industry, either as the result of inadequate audits, or accounting performance?

Ms. SCHAPIRO. I am no expert on the thrift industry, certainly. And really, my knowledge is limited to having seen bits of a hearing, a Banking Committee hearing, on television, and the articles I have read.

It does appear that there were clearly some problems in the accounting arena. The SEC does in fact take a very active role in working with the standard-setting boards that are private industry boards in the accounting area. My sense is that they do a good job, and that they have the SEC behind them, pushing them along in those areas where we do not think they really are quite doing what we would like to see.

So I think it is very much a cooperative effort.

The CHAIRMAN. Senator Gramm.

OPENING REMARKS OF SENATOR GRAMM

Senator GRAMM. Well, Mr. Chairman, let me first thank you for holding the hearings. I want to thank Ms. Schapiro for her willingness to serve.

I think sometimes we in Congress can be callous to how difficult it is to serve in the independent agencies or the executive branch. I know Ms. Schapiro has served on a temporary appointment for a year, faced the prospect after Congress adjourned of not being paid for as much as 6 months until we reconvened. And I rejoice that we are holding the hearing that we hopefully can bring the nomination to the floor this afternoon or tomorrow.

I am just grateful that there are qualified people that are willing to serve under these very difficult circumstances. And I think it is a great testament to you that you are willing to serve, and to our country that there are people who care enough about playing an important role in making America work that they are willing to take these jobs.

So I just congratulate you, and I am proud to support you.

Ms. SCHAPIRO. Thank you, Senator.

The CHAIRMAN. Thank you, Senator Gramm.

Senator Sanford.

Senator SANFORD. I find myself in agreement with the Senator from Texas now three times running——[Laughter.]

The CHAIRMAN. I think we had better adjourn soon here, before this becomes habit-forming.

Senator SANFORD. I would like, just for the record, to ask a question.

Do you have a view of the scope of the SEC's authority to participate in the responsibility on financial transactions dealing with tender offers?

Ms. SCHAPIRO. Yes, I do, Senator.

The Commission has traditionally, since enactment of the Williams Act, tried to take a neutral position as between target and bidder. And I think that our goal, given that perspective, has been to try to foster as full disclosure as possible of all aspects of a transaction, including financing, intent, and truly all aspects of it.

So I think that we have done things over the past few years that have been viewed by some as not activist enough in the shareholder rights area; and by some as too activist. For example, the extension of the proration period through the entire period of the tender, or the extension of withdrawal rights through the entire period of the tender offer.

On balance, our goal is to try to remain neutral, and to provide shareholders with all the information they could possibly need to make an informed decision about a tender offer.

Senator SANFORD. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Sanford.

Let me ask you this. How do you respond to the criticism that management has an inherent conflict of interest in a number of leveraged buyout deals because they have inside information?

Ms. SCHAPIRO. I think that that is an accurate statement, that there are inherent conflicts, because management is acting pre-

sumably as a fiduciary with respect to the shareholders, but also has an interest of its own in the transaction.

The Commission has, in the formulation stages, a rule proposal under section 13(e)(3), the goal of which is to recognize the inherent conflict of interest, and then to provide shareholders, through various means, with more of the information that is available to management, so that they can in fact see the transaction through management's eyes, and to essentially neutralize the informational advantage that management truly does have.

The CHAIRMAN. When you look at the last market break that we had—the 190-point drop—what is your own assessment of what set that off and what caused such a down draft in such a short space of time?

Ms. SHAPIRO. Well, I guess I would like to reserve judgment for a little while on what the actual cause was, and whether program trading played a significant role in that.

The SEC staff is studying the volatility on those particular days, the 13th and the 16th. And I would like to see what their assessment is of the percentage of program trading and the effect that it might have had.

The CHAIRMAN. Do I draw from that an inference that you think that perhaps program trading was part of it?

Ms. SCHAPIRO. I don't have an opinion about whether program trading is the cause of volatility. My guess would be that there are many causes of volatility, and the problem we have is that there is lots of money in the hands of a very few money managers, all trying to out-perform the S&P 500, and therefore, rather than paying close attention to the intrinsic value of stocks, they are following movements in the index, and we have everybody rushing to do essentially the same thing at the same time.

The CHAIRMAN. Is that a good thing?

Ms. SCHAPIRO. I don't know whether it is a good thing or not. If it is disruptive to the marketplace and is hurting our capital formation process, I think that that is not a good thing. How we get people to take a longer term view of the marketplace is something that I think is really beyond the ability of the SEC to effectuate and has to come about either through the tax process or some other way.

The CHAIRMAN. What is the current working estimate at the SEC as to the percentage of daily or weekly volume that is program trading volume?

Ms. SCHAPIRO. I haven't looked at the numbers recently. I recall during the summer it was about 10 percent of the daily volume on the New York Stock Exchange.

The CHAIRMAN. Do you know what it was in the last hour of the day the market broke?

Ms. SCHAPIRO. I want to say 25 percent, but I am not positive that that is correct. 23 percent or 25 percent.

The CHAIRMAN. But if it has been so—in other words, it was significantly above what the normal level would be. It sounds like it was at least twice, at least for that hour.

Ms. SCHAPIRO. If that is the correct number, I suspect that that is correct.

The CHAIRMAN. Why don't you see if you can find that out for us and submit that for the record?

Ms. SCHAPIRO. I would be pleased to.

[The following information was subsequently submitted for the record.]

Enclosed are answers to the questions submitted to me by Senator Riegle following my confirmation hearing.

In addition to the written questions, Senator Riegle requested that I submit for the record information concerning the amount of program trading conducted in the last hour of trading on October 13, 1989. Data received from the New York Stock Exchange ["NYSE"] to date indicates that from 3 p.m. to the close, program trading sell side activity accounted for 16.6 percent of trading volume on the NYSE, and 24.6 percent of S&P volume.

The CHAIRMAN. The Wall Street Journal recently wrote about off-market program trading. How does that work?

Ms. SCHAPIRO. The program trading——

The CHAIRMAN. And does the SEC review those transactions?

Ms. SCHAPIRO. If you are talking about extraterritorially, outside the United States, I don't believe we would have access to that information, and in fact a lot of program trading does take place in London.

The CHAIRMAN. Well, do we not have off-market trading even here?

Ms. SCHAPIRO. Well, program trading is defined as the simultaneous entry of orders for execution of 15 or more stocks. So I am sure that it does take place off the New York Stock Exchange and in other markets.

The CHAIRMAN. But I take it that you don't necessarily have a way now to monitor that activity; is that accurate?

Ms. SCHAPIRO. I honestly don't know the answer to that, Senator.

The CHAIRMAN. Does the SEC have a responsibility to the investing public in the area of maintaining liquidity? Does liquidity fall within the scope of the SEC, as you see it; in other words, managing the operations of the market with an eye toward maintaining liquidity?

Ms. SCHAPIRO. I think we don't have an obligation to manage the markets, but I do think that we have an obligation to ensure that the markets are fairly and efficiently and safely run so that liquidity is not scared away.

The CHAIRMAN. Let me restate the question. I should use the word "regulate," I suppose, as opposed to "manage." So let me substitute that word in my question, so that I don't throw your thinking off down a different track.

Senator SANFORD. This way you get 100 percent of the vote. [Laughter.]

Ms. SCHAPIRO. I think that to the extent possible the agency has taken the position that things it can do to facilitate liquidity being brought to the market, we will do those sorts of things, but I don't know that if people aren't inclined to be there on the buy side when everybody is selling that there is very much the SEC can do about that except through the approval of mechanisms like circuit breakers, and providing the opportunity for contra side liquidity to come to the marketplace.

The CHAIRMAN. How liquid is the secondary market for junk bonds, in your view?

Ms. SCHAPIRO. I think that there is a very good question about that. We don't really know—again the Commission is doing quite a detailed study of the junk bond market because we don't have a lot of answers to the questions. I think we saw in the last couple of months that there may not be very much liquidity and for that reason we may not really have a very good handle on what the pricing is in the secondary market either.

The CHAIRMAN. Right.

Ms. SCHAPIRO. The junk bond market is enormous. It is somewhere around $204 billion now, with a significant—maybe as much as 40 percent of that, in junk bond mutual funds and corporate bonds in toto are trading at a rate of about $14 billion worth a day.

I think that with a marketplace of that size, it behooves the SEC to have better information about what is going on in that market. The press reports recently indicate that the liquidity may not be there in the junk bond market to the extent we would like to see it.

The CHAIRMAN. Would it tend to be your view that as the savings and loans, those that have been substantial players in junk bond investments, go through the divestment that the new law requires, is that likely to reduce the amount of liquidity out there?

Ms. SCHAPIRO. I would imagine that it would.

The CHAIRMAN. How about your thoughts on the overall amount of leverage in the economy generally? Are you one of these "Don't Worry, Be Happy" people or is it beginning to bother you some that we are leveraged to our eyeballs in every direction?

Ms. SCHAPIRO. On a personal level I am worried about it, and I think that is one reason that I am so pleased that the Commission is doing a study, so we can get a handle on exactly how much leverage is out there and who controls it. I don't know what the SEC can do beyond providing full disclosure in the LBO context, particularly where junk bonds are utilized.

We have recently—this summer—published an instruction to issuers on their management discussion and analysis provisions that would require them to disclose more information regarding their junk bond holdings and what risk issuers are at as a result of their holdings.

I am definitely not a "Don't Worry, Be Happy" type about it, but I am not sure where we are going to end up going with it yet.

The CHAIRMAN. Would you see it as within the scope of the Commission to look at an issue, to look at it in a broad policy way, at a set of dynamics that was showing a hollowing out of equity on corporate balance sheets? If you saw a rather sharp tilt away from equity in corporate balance sheets generally speaking across the economy, would that be the kind of policy issue that would be seen by the Securities and Exchange Commission as something that it ought to think about and perhaps look at? Or would you see that as being over in somebody else's bailiwick and therefore outside the scope of the SEC's?

Ms. SCHAPIRO. I think we would look at that to the extent that it falls within our jurisdictional ability to do anything, but my guess is that it much more will fall to the Congress to make a decision

about whether that is a good trend or a bad trend and do something from this body.

The CHAIRMAN. How about stock parking? Ought it to be illegal? Would you view it that way?

Ms. SCHAPIRO. I believe it is illegal.

The CHAIRMAN. And why do you think that?

Ms. SCHAPIRO. There are several violations that can be tied up in a stock parking scheme, but the purchase of securities that are parked with someone else for the purpose of not disclosing what your holdings are is obviously a violation of section 13D, which would require that you file a notice of having achieved a 5-percent ownership level and what your intention is with respect to the securities.

It also is often involved in margin regulation violations.

The CHAIRMAN. I am going to ask you one other question, and then I am going to give you a series of questions that are manageable. We will not be giving you an unmanageable set in terms of time. But given the fact that we are trying to move quickly, I am going to give you some things to maybe work on even over the night time.

Ms. SCHAPIRO. I would be pleased to do that.

The CHAIRMAN. Good, I am sure you would, and it isn't to keep you burning the midnight oil, but we are really trying to work against a deadline of Congress concluding its action, and I would like to be able to do that in an orderly way and yet still have an appropriate hearing record with respect to your nomination and your views.

Let me ask you what are your views generally on the appropriateness of a failure to supervise sanction and under what circumstances would you support such a charge against an officer or broker/dealer?

Ms. SCHAPIRO. Well, I think there is clearly an obligation for broker/dealers to have in place systems which are geared toward preventing breakdown within their operation, to have supervisors who are ensuring that those procedures are being followed, and are carrying out responsibly their obligations under those procedures. I think that the Commission should be aggressive in pursuing failure to supervise cases.

In my year at the Commission, we have brought some—I hope that we will continue to bring them. I think it is a very important aspect of self-regulation that extends really beyond the exchanges to the broker/dealers and their responsibility to make sure that their operations are conducted in compliance with the law.

The CHAIRMAN. Is it your sense that the high profile insider trading cases that have been brought pretty well now have put an end to that kind of activity, or do you have the sense that there may be other either major cases or problems out there yet to be found?

Ms. SCHAPIRO. I would love to think that what we have done has brought an end to insider trading, but I think that is probably not the case, and we continue to pursue those cases very vigorously. I don't know that we will see another Drexel case in the very near future, but we will continue to pursue insider trading, as I think we have to.

The CHAIRMAN. Well, let me thank you for your comments and the directness of your answers. I appreciate it. We all get to hear lots of witnesses here, and there are a lot of ways to answer questions. I feel your answers have been direct, and I appreciate that.

So we will give you some other items to answer for the record, and we thank you for your testimony today, and we are pleased to have had you as a witness.

We earlier had had votes cast for the nomination, and I want to move the reporting out of the nomination, and so we will keep the voting record open through the next couple of hours to allow the remaining members to be so recorded, and so I want to instruct the clerk to make it a point not only to check the proxy votes, of which there are several, but those that did not leave proxies so that everyone can be so recorded, and my understanding is there are enough votes to report out the nomination, and it is the intention that it be reported out today.

The committee stands in recess.

[Whereupon, at 4:50 p.m., the committee was adjourned.]

[Biographical sketch and response to written questions follow:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Schapiro (Last) Mary (First) L. (Middle)

Position to which nominated: Commissioner - S.E.C. Date of nomination: September 14, 1988

Date of birth: 19-06-55 (Day) (Month) (Year) Place of birth: New York, NY

Marital status: married Full name of spouse: Charles Alba Cadwell

Name and ages of children: NA

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Babylon Jr-Sr High School, Babylon, NY	67-73	Regents Diploma	June 73
Franklin & Marshall College, Lancaster, Pa.	73-77	B.A.	May 77
National Law Center-George Washington University, Washington, D.C.	77-80	J.D. Honors	May 80

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

College: Black Pyramid (Honor Society)

Dean's List (all semesters)

Outstanding Senior Athlete

Pi Gamma Mu - National Social Science Honor Society

Law School: Trustee Scholarship (three years)

graduated cum laude

I have spoken on numerous panels for the American Bar Association, Chicago-Kent College of Law, Yale Law School and several exchanges.

I have also been the program chairman for the FIA's global risk management program in London for the past two years.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
American Bar Association	Executive Council Subcommittee on Futures Regulation	1984-present
Bar Association of the City of New York		1987-present
International Bar Assoc.		1987-present
D.C. Bar Association		1980-present
Humane Society of U.S.		1980-present
Smithsonian Resident Associates		1980-present

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

see attached Exhibit "A"

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Executive Office of the President Internship

Farm Credit Administration Internship

Commodity Futures Trading Commission Trial Attorney

Commodity Futures Trading Commission - Counsel and Executive Assistant to the Chairman

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Legal Rights of the Terminally Ill, Aging Magazine, Department of Health, Education and Welfare (now, HHS) (1979)

U.S./U.K. Memorandum of Understanding, FIA Review, (Dec. 1986)

Osaka, Tokyo Vie for Stock Index Dominance, FIA Review, (September, 1988)

Japan Faces Readjustments, FIA Report, (May, 1985)

Political affiliations and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Registered Democrat from 1973-1983

Registered "No-Party" from 1983-present

Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

none

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Exhibit "B"

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I will

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No plans

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

see attached Exhibit "C"

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

My duties as General Counsel to the Futures Industry Association have included representing the Association on regulatory and legislative issues before the Congress and various agencies.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

As General Counsel to the Futures Industry Association, I have worked on legislation affecting the commodity futures and options trading industry.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

See attached Exhibit "E"

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None, except for the background investigation for this nomination.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

Exhibit A

6/84 - present	Futures Industry Association, Washington, D.C. Senior Vice President and General Counsel
9/80 - 6/84	Commodity Futures Trading Commission, Washington, D.C. Trial Attorney (9/80 - 11/81) Counsel to Commissioner Phillips Counsel and Executive Assistant to the Chairman
5/79 - 9/79	Executive Office of the President, Washington, D.C OMB (intern) National Security Council (intern) Council on Wage and Price Stability (intern)
1/79 - 5/79	Farm Credit Administration, Washington, D.C. Office of the General Counsel (intern)
8/78 - 12/78	Pearce and Brand, Washington, D.C. law clerk

Exhibit "B"

I am an attorney with four years experience at a federal financial regulatory agency and four subsequent years experience as general counsel to a trade association of brokerage firms and market users. In these positions I have focused on regulatory and legislative matters affecting an increasingly important segment of the financial services industry -- the derivative financial instruments market.

As a trial attorney in the CFTC enforcement division I was involved in customer protection, trade practice and market manipulation matters. As counsel to Commissioner and then Chairman Phillips, I participated in decisions with respect to administrative appeals of customer reparations cases and enforcement actions. All appellate decisions required my approval before submission to the Commission for voting.

Both at the CFTC and FIA, coordination of regulatory policy has been a priority. For example, at the CFTC, I participated in the development with the SEC of criteria for approval of sectoral stock index contracts. At the FIA, I have worked to insure that the regulatory programs of various agencies work together, particularly with regard to tax and ERISA issues. I have also worked with U.S. and foreign regulators on coordination of legal, capital, disclosure and other requirements and regulatory reciprocity. I have expanded the availability of FIA's broker training course on market rules and practices to overseas markets. I have also worked with state securities commissions on a number of issues, for example, the California Telephonic Sellers Registration Act and the Model State Commodity Code.

At the CFTC, in addition to advising the Chairman on all policy matters, I managed the staff of the Chairman's office, oversaw preparation of the agency's budget and coordinated operation of the agency's six divisions and offices. The process of developing regulations, working with self-regulatory organizations, overseeing market activity and enforcing regulations is one that I have experienced from several perspectives, as enforcement staff, as policy advisor and industry representative.

Both at the CFTC and at the FIA, I have worked closely with the Congress. At the CFTC, I represented the agency in discussions with respect to oversight, reauthorization and appropriations. I appreciate the critical role of the Congress in the oversight of the financial markets and regulatory agencies.

Exhibit "C"

Kemper Money Market Portfolio
T. Rowe Price Prime Reserve Fund
SteinRoe Capital Opportunities
SteinRoe Cash Reserves
SteinRoe Total Return Fund
Merrill Lynch (IRA) - CD Pacific Coast S&L
Shearson Lehman Hutton HIS Bond and Income Series (IRA)

Exhibit "E"

I intend to resign my position at the Futures Industry Association and sever all my ties with the Association including withdrawal of my 401(k) account. In addition, as a Commissioner, I intend to disqualify and recuse myself from any matter before the Commission in the nature of a request on behalf of a specific party for an exemption from a rule or statute of general applicability, or matters involving the institution of enforcement proceedings where I had any connection or gained significant knowledge while I was at the Futures Industry Association.

In addition, I intend to disqualify and recuse myself, on a case-by-case basis, with respect to any matter, where, in order to avoid the possible appearance of impropriety, it appears desirable to me to disqualify myself, despite the lack of any actual conflict of interest. In general, it is not my intention to recuse myself from general policy considerations or rulemaking proceedings.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR RIEGLE FROM
Mary L. Schapiro

Question 1. What would you say to individual investors who complain to the Congress that program trading is having a serious adverse effect on their confidence in the markets and that it should be curtailed?

I would tell these investors that I share their concern regarding the instances of excessive volatility we have experienced in the last several years. It is my belief that excessive volatility is caused by several factors, and probably cannot be attributed solely to program trading. The term "program trading" encompasses many strategies (including index arbitrage) and includes strategies in which many small investors indirectly participate and from which they benefit. For example, many pension and mutual funds engage in program trading. In addition, it is important to note that the Commission, as well as the self-regulatory organizations, have taken numerous steps in the last two years directed at curbing excess volatility and restoring investor confidence. These measures include the implementation of circuit breaker mechanisms, enhanced market routing and execution capacity, and improvements in clearance and settlement.

Nevertheless, the Commission is committed to studying the causes of volatility, and is currently analyzing trading data from October 1989, as part of its ongoing study of market volatility. I support the need for such continuing study and believe it is appropriate to explore whether reasonable steps can be taken to moderate excess volatility.

Question 2. What would you say to those who argue that the markets are no longer adequately serving their traditional capital raising functions?

I think that the perception that the markets are not adequately serving their traditional capital raising functions is potentially very dangerous, since the belief that the markets are not available for capital raising may cause entrepreneurs and developing companies to turn away from decisions to seek growth or take risks to develop new ideas. The argument about the character of the market, and our expectations for it, is a vital one. During the two years since the 1987 market crash the Commission has begun to evaluate this problem, and I believe we must continue to do so on a systematic and sustained basis as a Commission, and in cooperation with other regulators and the Congress.

People who say that the markets are no longer adequately serving their traditional capital raising functions are reacting to a real phenomena. The role and function of the stock market is changing. In particular, for many fund managers, securities are a commodity, bought and sold for reasons unrelated to their intrinsic value as individual securities. This development is not sinister; it is part of a broader change in financial markets. The markets are taking on new functions, and inevitably, the traditional capital raising role is being buffeted.

I am not aware that there is reliable data to show that capital raising has actually been impaired by these market changes. Instead, I believe that the locus of capital raising is shifting somewhat -- whether temporarily or on a long term basis, no one can say -- to private placements and debt. In addition, since the passage of ERISA in 1974 and the explosive growth of mutual fund assets the markets have become increasingly institutionalized, and have taken on a new role as a trading market that looks to options, futures, swaps, and commodities as components of a complete portfolio. Accordingly, trading volume, volatility, the identity of market participants and the goals of those participants has changed to a dramatic degree over the past 10 years.

I believe the U.S. markets are basically strong and that they can support value investing and capital formation to the extent that general economic conditions, monetary, tax and other policies make those strategies sound. The markets also support other functions, and we must permit them to do so without harming investor confidence. Further consideration of this issue, and some changes, as discussed in my answers to questions one and three, are appropriate initial steps.

Question 3. Do you believe that margin requirements in securities and futures markets are sufficient? Should the margin requirements be equalized?

I believe that further study must be done to determine whether the present margin requirements for futures instruments are sufficient for prudential purposes, and what effect current margin levels for both securities and futures have on stock price volatility. I would note, however, that margin requirements for futures have been lowered significantly in the last year, after having been increased following the October 1987 market break. In addition to studying what role margin plays in determining volatility, we must consider the issue of when best to increase margin, if that is determined to be desirable. Margin increases effectuated in a declining market may exacerbate market instability.

I am not aware of any suggestion that margin requirements be equalized across all markets, though there have been suggestions that the authority to set margin levels be uniformly subject to review by the appropriate regulatory agencies. Since margin serves a different purpose in the futures markets than it does for securities, equalization would not appear to be appropriate.

Question 4. Do you believe that one federal entity should eventually have jurisdiction over the securities and futures markets?

I do not believe that vesting jurisdiction in a single agency is necessary. The SEC and the Commodity Futures Trading Commission have distinct expertises and unique statutory mandates that could be compromised if all jurisdiction resided within one agency. Nevertheless, it is imperative that cooperation and coordination between the agencies be a priority for both the SEC and the CFTC.

I think it may be necessary for Congress to revisit the issue of where the jurisdictional boundaries of the agencies should be drawn. A recent court opinion in the Seventh Circuit (Chicago Mercantile Exchange v. SEC) appears to hold that trading instruments possessing only a modicum of "futurity" are subject to the exclusive jurisdiction of the CFTC. In my opinion, there may be significant negative impacts on U.S. markets if innovative new products, largely possessing the attributes of a "security," are prohibited from trading on a national securities exchange because of the application of the exclusivity clause of the Commodity Exchange Act.

Question 5. Do you think current penalties that are available to the Commission are sufficient to deter securities violations or do you believe the Commission needs additional penalty authority and, if so, what would you recommend?

I do not believe that current penalties are adequate. As a member of the Commission I voted in favor of recommending to the Congress the Securities Law Enforcement Remedies Act of 1989 (S. 647/H.R. 975).

Foremost among the additional authority sought is the power to impose administrative fines, which I view as essential for providing sufficient deterrent, just, and flexible remedies for a variety of violations. There has been considerable opposition to particular provisions of the proposed bill, including the grant of authority to the Commission to bar persons from serving as officers and directors of publicly held companies. While such authority should be used only sparingly, and only in egregious cases - most often involving recidivist or chronic violations - I believe such authority is appropriate.

In addition, I supported the Commission's International Enforcement Proposal (S. 1712/H.R. 1396), which contains additional important enforcement powers, including the authority to sanction foreign securities professionals who seek to do business in the U.S. and who have been found to have violated foreign securities laws.

Chairman Breeden testified at his confirmation hearing that he favored a careful exploration of whether to seek specific cease and desist authority. The CFTC currently utilizes cease and desist authority as do a number of other agencies. I look forward to the opportunity to review the scope and effectiveness of this remedy at other agencies and would consider support for this, or other additional remedial authority in order to better tailor our enforcement remedies.

Question 6. What steps do you think the SEC ought to take to prevent front-running?

Frontrunning in the securities markets, defined as the practice of trading in the derivative securities market and the underlying market for the security in order to take advantage of material, nonpublic information, is a violation of the rules of all securities self-regulatory organizations. Each exchange has notified its members, through the issuance of circulars, that this practice is prohibited as conduct inconsistent with just and equitable principles of trade. As part of its oversight responsibility, SEC staff monitors the effectiveness of SRO programs designed to detect and prosecute frontrunning violations, and reviews all final disciplinary action taken by the SROs.

"Index" frontrunning, defined as the practice of trading stock index futures and securities in a manner to benefit from nonpublic information, has been explicitly prohibited by the New York Stock Exchange, the Chicago Mercantile Exchange, and the New York Futures Exchange. These exchanges have adopted rules, approved by the SEC and the CFTC, which define intermarket index frontrunning violations, and establish formal procedures for sharing surveillance information. While not all futures exchanges have adopted rules of this type, the futures exchanges and the CFTC participate in quarterly meetings of the Intermarket Surveillance Group. Additionally, beginning in 1988, the NYSE has required its members to routinely report all program trading for proprietary and customer accounts.

It is my belief that efficient enforcement of SRO frontrunning rules by the SROs (with close Commission oversight) will result in minimizing this type of conduct. Thus, I believe it is essential that both futures and securities SROs, and the SEC and CFTC, continue to work closely together to ensure that adequate surveillance procedures are in place to both detect and deter frontrunning.

Question 7. Do you believe that there should be a statutory definition of insider trading?

In concept, I do not oppose a statutory definition of insider trading based on a codification of existing law. Corporations and individuals should be able to know what activities are illegal, so they may take the necessary steps to comply with the law in planning their dealings. However, the judicially developed law with respect to insider trading is sufficiently clear, I believe, so that a statutory definition is not necessary at this time and could create unintended negative consequences.

In addition to providing clarity, a statutory definition would have to be sufficiently refined and sufficiently flexible to allow the prosecution of insider trading without creating an unintended refuge for cleverly crafted, but fraudulent schemes. Moreover, even a statutory definition can be subject to uncertainty.

The Commission's and the Department of Justice's program against insider trading has been effective. Insider trading continues -- but there is a credible deterrent, and I believe the extent of significant insider trading is low and should continue to go down as firms implement new procedures under the impetus of the Insider Trading and Securities Fraud Enforcement Act. While there are many conceivable fact patterns that straddle the line between legal and illegal conduct as defined by case law and Commission rules, I do not support, nor do I believe there is an inclination by other current Commissioners to bring cases on marginal theories.

Whether I would support a particular definition would depend on its content. As you are aware, the most recent effort to draft a statutory definition, S. 1380 was the product of months of intensive effort by many persons. Issues that arose in drafting the bill were complex. Neither the Commission, the bar, the securities industry nor the Congress could ultimately agree on the best approach to take. The Commission testified on S. 1380 in December 1987. Since then numerous developments have occurred in the case law, the Commission's enforcement program, statutory amendments made by ITSFEA, and the markets themselves.

I believe efforts to address penny-stock manipulations, which are often predicated on gross insider trading, traditional insider trading cases, such as those against Mr. Boesky, arising from extraordinary corporate developments, and evolving forms of insider trading, such as front-running or scalping, can be vigorously, but fairly and prudently pursued, within the existing regulatory scheme.

Question 8. What are your views on repeal of Glass-Steagall?

Prior to my appointment as a Commissioner, the Commission adopted the position that it would support repeal of the Glass-Steagall Act, provided that the new regulatory structure that takes its place will include the requirement that banks conduct most of their new and their existing securities activities in separate securities affiliates or subsidiaries subject to Commission regulation. The Commission also stated that major modifications of Glass-Steagall should be made by Congress rather than by regulatory agencies.

I endorse this basic position. Increasingly, the world's largest banks and securities firms are foreign. We must foster growth and innovation by banks and securities firms in order to allow United States financial firms not only to compete on a global scale, but to maintain a leadership role at home. I believe Congress can devise a regulatory system which will permit securities and banking firms to compete directly, while still preserving safeguards that protect the markets and our citizens from the types of speculation and abuse that lead to the enactment of Glass-Steagall.

The Commission's established view on repeal of Glass-Steagall has stressed that the Commission should regulate securities activities of bank affiliates, including the underwriting of corporate debt and equity securities. It is essential that these activities be carried out in subsidiaries registered with the Commission. Banking functions should continue to be regulated by banking agencies, with appropriate cooperation between agencies.

Securities activities and banking activities conducted by affiliated entities creates the potential for conflicts of interest that must be addressed in modernizing Glass-Steagall. Banking and securities activities serve different functions, markets and goals. This is appropriate. However, it creates differences - in capital requirements, risk analysis, marketing, insurance and other features between these two sets of activities.

Prior to my arrival at the Commission, the Commission made particular recommendations with regard to some of these matters. I agree with these recommendations that Congress:

- consider means to limit the improper sharing of confidential client information among units of a diversified financial services company;

- examine potential conflicts of interest arising out of bank underwriting activities of securitized assets and of securities of bank borrowers;

- examine the conflicts of interest arising in transactions between bank trust departments and affiliated entities;

- consider prohibitions on banks from extending or arranging credit secured by, or for the purpose of purchasing, any security that is underwritten by a bank's securities affiliate or in which the affiliate is an active participant;

- examine the possibility of requiring disclosure statements clarifying a bank affiliate's separate status; and

- address the conflicts posed by banking organization entry into the mutual fund business, including bank custody of assets of affiliated mutual funds, transactions among affiliates, borrowing by mutual funds from affiliated banks, the provision of investment advice by banks to mutual funds, standards for independent directors, and disclosure of the lack of federal deposit insurance.

Question 9. What reforms, if any, do you support in the tender offer and leveraged buyout areas?

The level of tender offer and leveraged buyout activity is driven primarily by general economic conditions, tax policy, antitrust policy and the climate for foreign investment. The Commission's role under the Williams Act has traditionally been to require full, fair and timely disclosure, without seeking to favor bidder or target.

Tender offers and leveraged buyouts can serve beneficial purposes. A market for corporate control can be a catalyst for corporate efficiency and innovation. However, the level of tender offer and leveraged buyout activity, as well as the structure of many recent deals, is of concern. Some tender offers and buyouts, while perhaps justified on a theoretical, economic basis, inflict turmoil on communities, employees, suppliers and others.

I would not favor direct limitations on tender offer or leveraged buyout activity. However, I think we should examine, and consider the need for reforms targeted at conflicts of interest which may arise when the interests of management, boards of directors and their advisors diverge from those of shareholders.

The Commission staff has been preparing proposed new disclosure rules with respect to management buyouts. I believe additional disclosures are probably warranted, and look forward to an opportunity to examining the staff's findings and recommendations.

Many tender offers and LBOs are launched after a bidder has accumulated a toehold stock position triggering the filing requirements of Section 13(d). I support efforts to shorten the window for making 13D filings from ten days to five, and to require a purchasing standstill until the 13D filing is made. I also support the Commission being granted the ability to impose fines for Section 13(d) violations.

I also believe that proxy contests have and will become even more important in contests for corporate control. The staff is also considering a variety of issues relating to the proxy rules and I look forward to the opportunity to address those issues. In particular, I believe we should consider the potential benefits of secret balloting, at least for certain classes of shareholders, such as employees.

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